

# Temporary Limit on Third-Party Food Delivery Service Fees



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# Purpose

- Recommend adoption of emergency ordinance to temporarily cap fees charged by third-party delivery services to Hayward restaurants during the COVID-19 pandemic at 15%
- Ease economic burdens and support business continuity of Hayward restaurants impacted by Shelter in Place Order requirements

# Background

## **State of Emergency (COVID-19 Pandemic):**

March 4, 2020 – State of California

March 11, 2020 – Hayward City Council

## **Shelter-In-Place Order:**

March 16, 2020 Alameda County (Delivery/takeout only)

March 20, 2020 State of California

July 15, 2020 Alameda County (Outdoor dining allowed)



# Rise of Third-Party Delivery Companies

- Provide ordering, marketing and delivery services to restaurants online and through mobile applications
- Nationwide, sales through third-party services increased over 150 percent year over year since July
- Industry consolidation leaves restaurants with less ability to negotiate service contracts



# Third-Party Delivery Service Fees

- Restaurants negotiate and enter into service contracts
- Fees range between 30 to 35 percent of the order value
- Fees vary based on contract terms, order origination, delivery distance
- Service providers use fees to pay and provide commercial insurance for delivery drivers, market restaurants, develop and maintain websites, ordering platforms

# Impacts to Restaurants

- 340 restaurant and related food establishments in Hayward with approximately half using a third-party delivery service
- Outreach via interviews and request for comments from all Hayward restaurants via business license database, Chamber of Commerce, DHIA and Downtown Merchants Groups:
  - Reliance on as much as 40 percent of their business from third-party providers
  - Fees charged have resulted in some not recouping enough net revenue to cover costs
  - Some are considering closing permanently

## Example Fee Pricing (GrubHub)

### Taco Fix Pricing Example

Marketing Commission	20%
Delivery Commission	10%
Processing Fee	3.05% + \$0.30
Delivery Tip	15%
Sales Tax	8%
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2 × Fish Tacos	\$8.00
3 × Carne Asada Tacos	\$10.50
1 × Carnitas Plate + Rice & Beans	\$12.50
1 × Guacamole & Chips	\$6.00
1 × Bottled Soda	\$2.00
1 × Bottled Water	\$2.00
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<b>Product Total</b>	<b>\$41.00</b>
Sales Tax	\$3.28
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<b>Receipt Total</b>	<b>\$44.28</b>
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Marketing Commission <sup>1</sup>	(\$8.20)
Delivery Commission <sup>1</sup>	(\$4.10)
Processing Fee <sup>2</sup>	(\$1.65)
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<b>Total Commissions &amp; Fees</b>	<b>(\$13.95)</b>
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<b>Total Revenue<sup>3</sup></b>	<b>\$30.33</b>

# Summary of Ordinances in the Region

City	Fee Cap	Total Effective Cap	Grace Period	Termination Clause	Effective Date
<b>Berkeley</b>	15% on delivery orders No delivery fee on orders that do not involve delivery No more than 5% in other fees or costs	20%	None specified	Termination of local state of emergency	7/7/2020
<b>Fremont</b>	15%	15%	7 days	Termination of local state of emergency	7/23/2020
<b>Livermore</b>	15%	15%	7 days	When dine in service is permitted by the County	8/12/2020
<b>Oakland</b>	15% + credit card processing costs	18%-19%	30 days	90 days after end of local declared emergency	7/28/2020
<b>San Leandro</b>	15%	15%	None	When dine in service is permitted by the County or termination of the state of emergency	7/13/2020

# Proposed Emergency Ordinance

- Limit fees charged by third-party delivery services to 15 percent per order
- Establishes a grace period to October 6, 2020 provided third-party service providers refund fees charged in excess of 15 percent
- Establishes a process for restaurants to request refunds of fees above the limit within seven days of the order.
- Requires third-party service providers to issue a refund within seven calendar days of the request
- Enable restaurants to take civil action seeking damages and injunctive relief if a third-party delivery service provider refuses to provide a requested refund.



# Enforcement & Termination

- Penalties for violations in accordance with section 623 of the Charter of the City of Hayward. The fine amount for any violation of any section of the Municipal Code is set forth in the FY 2021 Master Fee Schedule:
  - First Violation - \$100.00
  - Second Violation - \$200.00
  - Third and Subsequent Violations - \$500.00
- Effective immediately upon adoption of the emergency ordinance
- Terminates 90 days after the Hayward City Council terminates the declared local emergency.

# Other Issues to Consider

- A fee cap may:
  1. Reduce the level of marketing services by third-party delivery companies for Hayward restaurants and result in reduced sales.
  2. Reduce driver tips
  3. Result in discontinued delivery service in the City of Hayward
- Overall, staff believes these risks are partially mitigated by the temporary duration of the fee cap, grace period, and right to private action model.

# Recommendation

That the City Council:

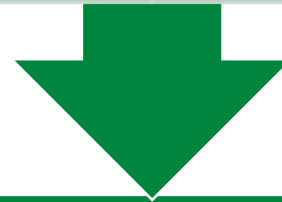
- Adopts an emergency ordinance that establishes a temporary 15 percent limit on fees charged by third-party food delivery service providers to Hayward restaurants during the COVID-19 pandemic.

# Emergency Ordinance Adoptions

## Emergency Ordinance

5 affirmative votes

Adopted and effective  
immediately



## Non-Emergency Ordinance

4 affirmative votes

Adopted at next Council Meeting  
and effective 30 days later

# Next Steps

If approved:

1. Send notification to all Hayward restaurants and business associations
2. Send notification to major third-party delivery service providers



# Questions

